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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,124	03/08/2001	Gary Tapperson	F292.12-0014	2637

164 7590 08/06/2004

KINNEY & LANGE, P.A.  
THE KINNEY & LANGE BUILDING  
312 SOUTH THIRD STREET  
MINNEAPOLIS, MN 55415-1002

EXAMINER
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LUU, LE HIEN

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/805,124	<b>Applicant(s)</b> TAPPERSON ET AL.	
	<b>Examiner</b> Le H Luu	<b>Art Unit</b> 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03/08/2001 - 05/06/2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 9-15, 24-30 and 37-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 16-23 and 31-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) *   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/11/01</u> . | 6) <input type="checkbox"/> Other: _____  |

1. Claims 1-8, 16-23, and 31-36 are presented for examination.
2. Applicant's election with traverse of claims 1-8, 16-23, and 31-36 in the reply filed on 05/06/2004 is acknowledged. The traversal is on the ground(s) that the Examiner has not made a prima facie showing that each of the species groups identified in the Office Action relate to a patentably distinct species in according to MPEP 803.. This is not found persuasive because in according to 809.02(a), where generic claims are present, the examiner should send a letter including only a restriction requirement Action as follows should be taken:

(A) Identify generic claims or indicate that no generic claims are present. See MPEP § 806.04(d) for definition of a generic claim.

(B) Clearly identify each (or in aggravated cases at least exemplary ones) of the disclosed species, to which claims are restricted. The species are preferably identified as the species of figures 1, 2, and 3 or the species of examples I, II, and III, respectively. In the absence of distinct figures or examples to identify the several species, the mechanical means, the particular material, or other distinguishing characteristic of the species should be stated for each species identified. If the species cannot be conveniently identified, the claims may be grouped in accordance with the species to which they are restricted. In this particular case, the eight distinct species are central control is capable of communicating with the field device through the wireless communication links for monitoring process variables, performing control actions, performing diagnostics, gathering status information, accessing secondary

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functions of the field devices, performing shut-down procedures, observing critical temperatures and pressures, or adjusting device operating characteristics.

The requirement is still deemed proper and is therefore made FINAL.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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4. Claims 1-8, 16-23, and 31-36 are rejected under 35 U.S.C. § 102(e) as being anticipated by **Strasser et al. (Strasser)** patent no. **5,612,890**.

5. As to claim 1, Strasser teaches the invention as claimed, including a distributed industrial process control system (figures 1- 2) comprising:

a central control including a computer system (PC1 52, figures 1-2), user input/output I/O) for providing an interface between the computer system and a user, and a wireless communication link associated with the computer system for transmitting and receiving process control and secondary information (col. 6 line 18 - col. 7 line 8); and

a distributed network of industrial process control field devices, at least one of the field devices having an associated wireless communication link for transmitting and receiving process control and secondary information to provide wireless communication between the computer system of the central control and the field device (col. 6 lines 18-42).

6. As to claim 2, Strasser teaches a controller for controlling field devices of the distributed network based upon commands from the computer system and for providing data to the computer system based upon signals received from the field devices of the distributed network (col. 6 line 62 - col. 8 line 51).

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7. As to claims 3-4, Strasser teaches the field devices and the wireless communication link associated with the field devices are powered from the distributed network (col. 2 lines 56-64).

8. As to claims 5-6, Strasser teaches the distributed network includes a field module in communication with a plurality of field devices and a wireless communication link associated with the field module to communicate with the plurality of field devices, and the distributed network includes a network bridge and a wireless communication link associated with the network bridge to communicate with field devices connected to control networks serviced by the network bridge (figures 1-2; description begins col. 5 line 49).

9. As to claim 7, Strasser teaches the secondary information includes diagnostic data (col. 14 lines 44-57).

10. As to claim 8, Strasser teaches the central control is capable of communicating with the field device through the wireless communication links for monitoring process variables (col. 7 lines 33-65).

11. Claims 16-23 and 31-36 have similar limitations as claims 1-8; therefore, they are rejected under the same rationale.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu, whose telephone number is (703) 305-9650. The examiner can normally be reached Monday through Friday from 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached at (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7240.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9306, (for formal communications; please mark "EXPEDITED PROCEDURE").

Or:

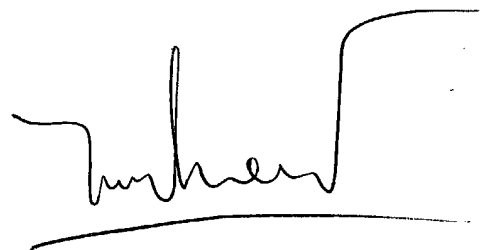
(703) 872-9306 (for informal or draft communications, please label "PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).



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A handwritten signature in black ink, appearing to read 'Le Hien Luu', written over a horizontal line.

LE HIEN LUU  
PRIMARY EXAMINER  
July 15, 2004